IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 304 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

U G NATHWANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 304 of 1988

MR DM THAKKAR for Petitioner No. 1

MR K.P. RAVAL, AGP, for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 15/06/2004

ORAL JUDGEMENT

The petitioner, a senior clerk, working in Government Girls' High School at Junagadh, has challenged

the validity of orders dated 11.8.1987 and 20.8.1987 passed by the Dy. Director of Education, Gujarat State, whereby the representations made by the petitioner against adverse remarks given to her for the period commencing from 1.4.1982 to 31.3.1983 and from 1.4.1983 to 22.3.1984 have been turned down.

2. The facts giving rise to the present petition, in a nutshell, are as under :

2.1 For the year commencing from 1.4.1982 to 31.3.1983, the petitioner was communicated adverse remarks on 30.1.1987 by the District Education Officer, Dist. Junagadh. For the said period, the petitioner was not found to be quite careful and, therefore, an intimation was given to her to be more careful in her work. She was also found to be slow and she was not having cordial relations with her colleagues. Her hand-writing also appeared to be not legible.

2.2 Similarly, for the period commencing Similarly, for the period commencing from 1.4.1983 to 22.3.1984 also, the petitioner was communicated adverse remarks on 30.1.1987 by the District Education Officer, Junagadh. For the said period, she was found to be irregular and slow in her work. She was not meticulous in her work and she was weak at preparing notes. Moreover, she was not having sufficient competence to d the work of a senior clerk.

2.3 Being aggrieved by the aforestated adverse remarks, the petitioner made representations to the District Education Officer, Junagadh.

2.4 The representations made by the petitioner were considered by the Dy. Director of Education, and both the representations made by the petitioner were turned down. In the impugned orders dated 11.8.87 and 20.8.87 it has been recorded by the Dy. Director of Education that he had considered the opinion received from the concerned authority and upon perusal of the opinion, he did not think it proper to set aside the adverse remarks and, therefore, the representations made by the petitioner had been rejected.

3. Learned advocate Shri D.M. Thakkar appearing for the petitioner has submitted that the adverse remarks were communicated to the petitioner very late. The remarks for the year 1982-83 as well as 1983-84 had been communicated to the petitioner on 30.1.1987. According to him, adverse remarks ought to have been communicated

to the petitioner within six weeks from the date on which the said remarks were made, as provided in the Government Resolution passed by the General Administration Department of the State of Gujarat dated 31.3.1989. It has been submitted by him that as per law laid down by this court in the case of C.N. Chavda v. Director-General of Police, Gujarat State reported in 1992(1) G.L.H. 209, if adverse remarks are communicated at a belated stage, such adverse remarks cannot be considered. He has also relied upon the judgment delivered by the Hon'ble Supreme Court in the case of State of Haryana v. P.C. Wadhwa, AIR 1987 SC 1201. According to him, in the instant case, much delay had been caused in communicating the adverse remarks and, therefore, the said adverse remarks should not be looked into and it should be expunged.

4. It has been further submitted by him that while rejecting the representations, the Dy. Director of Education has not assigned any reason. Though he has referred to the opinion/remarks received by him from the Principal of the Government Girls' High School, Junagadh and the District Education Officer, Junagadh he has not stated the contents of the letter or communication received by him from the said two authorities. It has been, therefore, submitted by him that the orders passed by the said authority are not reasoned orders and, therefore, the said orders should be quashed and set aside.

5. On the other hand, learned AGP Shri K.P. Raval appearing for the respondent authorities has submitted that the adverse remarks referred to in the petition for the period commencing from 1.4.82 to 22.3.84 are just and proper. According to him, the petitioner was found to be lethargic and slow in her work. Her relations with her colleagues were not cordial and, therefore, the remarks were justified. It has been submitted by him that the delay in communication was on account of a default committed by the principal of Government Girls' High School. It was his duty to communicate the remarks within the period prescribed, but he could not do the same. It has been, therefore, submitted by him that the petition deserves dismissal.

6. I have heard the learned advocates and have also considered the judgments referred to by the learned advocate for the petitioner.

7. There is substance in what has been submitted by learned advocate Shri Thakkar appearing for the

petitioner. The remarks given to the petitioner are not specific. Even in the reply filed by the respondent authorities it has not been stated as to how such remarks had been supported by the reviewing authority or by the Dy. Director of Education, who had turned down the representations. He could not show whether the petitioner was ever given any memo or was ever rebuked orally by the higher authorities in the matter of shortcoming of the petitioner. The remarks with regard to not having cordial relations with the colleagues also appear to be vague.

8. Moreover, what is more important is that there was delay in communication of the adverse remarks and for the said delay no justifiable reason has been stated in the affidavit-in-reply. Looking to the law laid down by this court in the case of C.N. Chavda (supra), it is clear that if there is substantial delay in communication of adverse remarks, the adverse remarks so communicated should not be looked into. In the instant case, adverse remarks for the period from 1.4.82 to 22.3.84 had been communicated to the petitioner on 30.1.87. The reason assigned for the delay caused in communicating the remarks does not appear to be just and proper. Looking to the law laid down by the Hon'ble Supreme Court in the case of State of Haryana v. P.C. Wadhwa (supra), and followed by this court in the case of C.N. Chavda (supra), adverse remarks, which had been communicated to the petitioner after 3 years, cannot be justified. Looking to the aforestated reasons and especially in view of the delay caused in communication of the adverse remarks to the petitioner, the impugned orders dated 11.8.87 and 20.8.87 deserve to be quashed and set aside and the petition deserves to be allowed.

9. The petition is accordingly allowed. The adverse remarks are ordered to be expunged from the record of the petitioner and the respondent authorities are directed not to consider the adverse entries made in the confidential record of the petitioner for the period commencing from 1.4.82 to 22.3.84. Rule is made absolute with no order as to costs.

(A.R. Dave, J.)

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